

**REMARKS**

Claims 17-23, 26-28, 30-40, 42-44, and 46-50 are pending in the application. Claims 17-22 were withdrawn from prosecution and are cancelled in the present amendment.

Applicants thank the Examiner for the interview granted to them on February 1, 2006. Upon recommendation from the Examiner, Applicants have amended claims 23, 30-32, 38, 40 and 47 to recite "a truncated azurin" or "a truncated cytochrome C<sub>551</sub>." Support for this amendment may be found throughout the specification, and specifically in paragraph [0062]. Also upon recommendation from the Examiner, Applicants have amended claim 23 to recite "a patient who has cancer." Support for this amendment may be found throughout the specification, and specifically in paragraph [0031]. It is submitted that no new matter has been introduced by the present amendments and entry of the same is respectfully requested. By the amendments, Applicants do not acquiesce to the propriety of any of the Examiner's rejections and do not disclaim any subject matter to which Applicants are entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997).

Applicants note with appreciation that the objection to the claim numbering has been withdrawn. Further, Applicants note with appreciation that the rejection of claims 40, 42-44, 47-49 under 35 U.S.C. § 102(a) as being anticipated by Zaborina (2000, Microbiology, vol. 146, pages 2521-2530) have been withdrawn. Finally, Applicants note with appreciation that the rejection of claims 23, 26-32 under 35 U.S.C. § 103(a) as being obvious in light of Zaborina (2000) has been withdrawn. Office Action mailed November 1, 2005 at page 7.

Applicants note that the rejection under 35 U.S.C. § 112, first paragraph of claim 33 has not been repeated in the present Office Action, so the Applicants conclude, with appreciation, that the rejection as it applies to this claim has been withdrawn. Applicants further note that the rejection under 35 U.S.C. § 102(b) of claim 46 as being anticipated by U.S. Pat. No. 5,681,810 has not been repeated in the present Office Action, so the Applicants conclude, with appreciation, that the rejection as it applies to this claim has been withdrawn. Finally, Applicants note that the rejection under 35 U.S.C. § 102(b) of claims 37 and 44 as being anticipated by U.S. Pat. No. 5,972,899 have not been repeated in the present Office Action, so the Applicants conclude, with appreciation, that the rejection as it applies to these claims has been withdrawn.

**I. REJECTIONS UNDER 35 U.S.C. § 112, first paragraph**

The Examiner has rejected claims 23, 30, 34-40, 43, 44, 46-48 and 50 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Office Action mailed November 1, 2005 at page 2. Claims 30, 38, 47, 48 and 50 are newly rejected on these grounds. Specifically, the Examiner alleges that there is not written description for a genus of products recited as “azurin or a variant or derivative of thereof,” and “cytochrome 551 or a variant or derivative thereof.” .

While not acquiescing to the propriety of the this grounds of rejection, claims 23, 30, 38, 40 and 47, and consequently their dependant claims 34-37, 39, 43, 44, 46, 48 and 50 have been amended to remove “or a variant or derivative thereof”. Applicants reserve the right to file divisional and continuing applications with claims addressing the deleted subject matter. Applicants maintain that the claims as amended are fully supported by the specification.

Accordingly, Applicants respectfully request that the present rejection of claims 23, 30, 34-40, 43, 44, 46-48 and 50 under 35 U.S.C. § 112, first paragraph be reconsidered and withdrawn.

**II. REJECTIONS UNDER 35 U.S.C. § 112, second paragraph**

Claims 26-28, 42, 46 and 48 are newly rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as their invention. Office Action mailed November 1, 2005 at page 7. Specifically, the limitation “the cytotoxic factor” is alleged to have insufficient antecedent basis. The Examiner suggests amending these claims to recite “compound” instead of “cytotoxic factor.” Accordingly, Applicants have amended claims 26-28, 42, 46 and 48 to recite “compound” in the place of “cytotoxic factor.”

Accordingly, Applicants respectfully request that the present rejection of claims 26-28, 42, 46 and 48 under 35 U.S.C. § 112, second paragraph be reconsidered and withdrawn.

### **III. REJECTIONS UNDER 35 U.S.C. § 102(b)**

#### **A. Rejection of claims 23, 30-36, 38-40, 43, 47, 49 and 50 under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,681,810**

The Examiner has rejected of claims 23, 30-36, 38-40, 43, 47, 49 and 50 under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,681,810 (the '810 patent). Claims 30-32, 38, 47, 49 and 50 are newly rejected on these grounds. Specifically, Examiner alleges that the '810 patent anticipates the present invention when it describes a method for modulating melanoma cell death by administering to a patient a pharmaceutical comprising "a variant or derivative thereof" of either azurin or cytochrome C<sub>551</sub>. Office action mailed November 1, 2005 at page 5.

While not acquiescing to the propriety of the this ground of rejection, claims 23, 30-32, 38, 40 and 47, and dependant claims 33-36, 39, 43, 49 and 50 have been amended to remove the phrase "a variant or derivative thereof". Applicants reserve the right to file divisional and continuing applications with claims addressing the deleted subject matter. Applicants maintain that the '810 patent does not teach or disclose the subject matter of the amended claims.

Accordingly, Applicants respectfully request that the present rejection of claims 23, 30-36, 38-40, 43, 47, 49 and 50 under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,681,810 be reconsidered and withdrawn.

#### **B. Rejection of claims 23, 30-36, 38-40, 43, 47, 49 and 50 under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,972,899**

The Examiner has maintained the rejection of claims 23, 30-36, 38-40, 43, 47, 49 and 50 under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,972,899 (the '899 patent). Claims 30-32, 35-36, 38, 47, 49 and 50 are newly rejected on these grounds. Specifically, the Examiner alleges that the '899 patent anticipates the present invention in its description regarding the Shigella toxin. Office action mailed November 1, 2005 at page 6.

While not acquiescing to the propriety of the this ground of rejection, claims 23, 30-32, 38, 40 and 47, and dependant claims 33-36, 39, 43, 49 and 50 have been amended to remove the phrase "a variant or derivative thereof". Applicants reserve the right to file

divisional and continuing applications with claims addressing the deleted subject matter. Applicants maintain that the '899 patent does not teach or disclose the subject matter of the amended claims.

Accordingly, Applicants respectfully request that the present rejection of claims 23, 30-36, 38-40, 43, 47, 49 and 50 under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,972,899 be reconsidered and withdrawn.

**C. Rejection of claims 40 and 43 under 35 U.S.C. § 102(b) as anticipated by Zaborina et al. (1999)**

Claims 40 and 43 have been newly rejected under 35 U.S.C. § 102(b) as anticipated by Zaborina et al., Oct. 1999, *Infection and Immunity*, 67:5231-5242 ("Zaborina"). Office Action mailed November 1, 2005 at page 6. Specifically, the Examiner alleges that the ATP-utilizing enzymes secreted by mucoid *P. aeruginosa* of Zaborina meets the limitations of claim 40. Office action mailed November 1, 2005 at page 6.

While not acquiescing to the propriety of the this ground of rejection, claim 40 and dependant claim 43 has been amended to remove the phrase "a variant or derivative thereof". Applicants reserve the right to file divisional and continuing applications with claims addressing the deleted subject matter. Applicants maintain that Zaborina does not teach or disclose the subject matter of the amended claims.

Accordingly, Applicants respectfully request that the present rejection of claims 40 and 43 under 35 U.S.C. § 102(b) as anticipated by Zaborina be reconsidered and withdrawn.

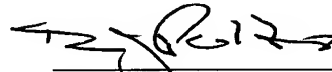
**CONCLUSION**

Applicants have properly and fully addressed each of the Examiner's grounds for rejection. Applicants submit that the present application is now in condition for allowance. If the Examiner has any questions or believes further discussion will aid examination and advance prosecution of the application, a telephone call to the undersigned is invited.

If there are any additional fees due in connection with the filing of this amendment, please charge the fees to undersigned's Deposit Account No. 50-1067. If any extensions or fees are not accounted for, such extension is requested and the associated fee should be charged to our deposit account.

Respectfully submitted,

February 28, 2006



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